In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1899

ROBERT NEIL MARTAIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on eight counts of causing the interstate transportation of forged and fraudulent checks, in violation of 18 U.S.C. 2314. He was sentenced to concurrent terms of eight years' imprisonment. The court of appeals affirmed from the bench (Pet. App. A1).

Petitioner contends that it was improper to introduce evidence of an intra-state use of a forged check as part of the proof of the interstate crimes, and that the proof of the crimes was insufficient. These contentions are without merit. The evidence of which he complains showed his effort on May 4, 1972 to purchase an airline ticket in Chicago by presenting a forged check for $316 drawn on a Chicago bank (see Pet. 3). This incident led to his arrest and the development of the case against

him, but it was not, contrary to petitioner's suggestion (Pet. 2), the basis of any of the eight counts of the indictment; each of those counts was based on his purchase of airline tickets, in states other than Illinois, by presenting forged and fraudulent checks drawn on the Chicago bank. His connection with these checks was established by fingerprint and handwriting analysis evidence (see Pet. 2). Testimony concerning the attempted Chicago purchase was properly admitted under the "similar acts" doctrine to show a common plan, scheme or course of conduct. *United States* v. *Stevens*, 452 F. 2d 633, 635 (C.A. 10); *United States* v. *Hutul*, 416 F. 2d 607, 624 (C.A. 7), certiorari denied, 396 U.S. 1012; *United States* v. *Johnson*, 382 F. 2d 280, 281 (C.A. 2); see also *Lisenba* v. *California*, 314 U.S. 219, 227.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.